

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Appeal No.501 OF 2009**

Between:

M/s.G.K.Strips Pvt. Ltd. ... Appellant  
And

State of A.P, rep. by Public Prosecutor and  
others. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.09.2022

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- |   |                                                                            |        |
|---|----------------------------------------------------------------------------|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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**K.SURENDER, J**

\* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.501 of 2009

% Dated 06.09.2022

# M/s.G.K.Strips Pvt. Ltd

... Appellant

And

\$ State of A.P, rep. by Public Prosecutor  
And others.

..Respondents

! **Counsel for the Appellant:** Sri Sharad Sanghi.

^ **Counsel for the Respondents:** Public Prosecutor for R1

Sri C.Sharan Reddy for R2 to R4

> **HEAD NOTE:**

? **Cases referred**

<sup>1</sup> 1993 (1) ALT 370

<sup>2</sup> 2001 (1) ALD (Cr1.) 452 A.P

<sup>3</sup> (2008) 13 Supreme Court Cases 689

**HON'BLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.501 OF 2009****JUDGMENT:**

1. The appellant has filed the present appeal questioning the correctness of the judgment of the III Additional Chief Metropolitan Magistrate, Hyderabad in CC No.584 of 1999 dated 20.06.2008 acquitting the respondents/accused for the offences under Section 138 of the Negotiable Instruments Act.

2. The case of the appellant is that its company has supplied goods in the course of day to day business to the respondents and towards sale consideration, the cheque Ex.P4 for Rs.10,68,000/- was issued by the 1<sup>st</sup> respondent company, owned by the 2<sup>nd</sup> respondent. The said cheque when presented for clearance was returned unpaid. Aggrieved by the same, the appellant issued legal notice. A copy of which is marked as Ex.P6. Pursuant to the issuance of the said legal notice, since the payment was not made, the appellant company represented by its Director S.N.Agarwal filed the present complaint.

3. Learned Magistrate after examining Sri Gopal Agarwal, the Managing Director of the appellant company and marking Exs.P1 to P13 and also examining the 2<sup>nd</sup> respondent as D.W.1 and one Senior Assistant from RTA Department as D.W.2 V.Narasimha Reddy, dismissed the complaint.

4. The main ground on which the complaint was dismissed was that the complaint was filed beyond limitation. Originally the complaint was filed on 25.08.1999 before IV Additional Metropolitan Magistrate, which is the jurisdictional Court. After the said Court returned the complaint on the point of jurisdiction, the complaint was filed in the Court of III Additional Chief Metropolitan Magistrate at Hyderabad, which admittedly is beyond the period of limitation prescribed under Section 138 of the N.I.Act for filing the complaint. The learned Magistrate also found that the defacto complainant/appellant also failed to make out his case that there was any legally enforceable debt after going through Exs.D2 to D45, which were marked by the 2<sup>nd</sup> respondent/A2. After going through Exs.D2 to D45, which are copies of personal register extract,

though heavy material were transported in autos, motor cycles and cars, which numbers were reflected in Exs.D2 to D45, transportation of goods was not being proved by the complainant under Exs.D2 to D45. The learned Magistrate also found that service of legal notice was also not proved as the acknowledgment Ex.P11 does not bear the signatures of the respondents, which is admitted by the complainant/P.W.1. For the above reasons, the learned Magistrate found that the complaint has to be dismissed and accordingly acquitted the respondents.

5. Admittedly, the complaint was initially filed before the IV Metropolitan Magistrate, Hyderabad, which does not have jurisdiction and subsequently filed before the III Additional Chief Metropolitan Magistrate at Hyderabad on 06.09.1999. According to Section 142 of the N.I.Act, a complaint has to be made within one month of the date on which the cause of action arises under clause "C" of proviso to Section 138 of the N.I.Act. Admittedly, the date 06.09.1999 is beyond one month limitation as prescribed under Section 142-B of the N.I.Act.

6. The learned counsel for the appellant submits that since the complaint is filed in time before the IV Metropolitan Magistrate on 25.08.1999, the subsequent filing before the concerned jurisdictional Court would only be a resubmission. Since the complaint was filed in time before the IV Metropolitan Magistrate, Hyderabad, the present complaint is maintainable and not beyond the period of limitation. In support of his contention, he relied on the judgment of this Court in **Appu Ramani and others v. The State**<sup>1</sup> and has drawn the attention of this Court to para 12, which reads as follows:

“12. Following the above principles, let us examine the facts of the present case. The date of offence in this case is 30-11-1986 and the charge-sheet was filed in the first instance on 19-10-1987 and it was returned for rectifying certain defects on the same day, i.e., 19-10-1987 and the same was represented on 25-4-1988 and ultimately cognizance was taken by the Magistrate on 6-6-1988. As the charge-sheet was filed on 19-10-1987 i.e., within one year from the date of offence alleged to have been committed on 30-11-1986, we hold that it is within the period of limitation and that taking of the cognizance of the case by the Magistrate 6-6-1988 is valid and does not suffer from any infirmity or error. We are unable to agree with the unreported decision of Bhaskar Rao, J. dated 17-9-1990 in CrI.R.C. No. 409 of 1990 and it is accordingly overruled.”

7. The said case was filed under Andhra Pradesh Forest Act, 1967 for the offence punishable under Section 29(4). The Hon'ble Division Bench held that when the charge sheet which

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<sup>1</sup> 1993 (1) ALT 370

was filed at the first instance was within the limitation period subsequent resubmission would not adversely affect the filing of the charge sheet and accordingly held that since the first submission of the charge sheet was within the prescribed limitation period, taking cognizance subsequently on resubmission does not suffer from any infirmity.

8. The other judgment relied upon by the learned counsel for the appellant in the case of **Pritama Reddy v. Charminar Co-operative Urban Bank Limited**<sup>2</sup>, wherein it is held as follows:

"19. The complaints were represented in these cases on 9-8-1999. On 10-8-1999 it was returned on an office objection taken since the complaints were not signed by the complainant and the complaints were filed without vakalath. The objection having been complied with, the complaints were represented on 20-9-1999. The complaints should be filed admittedly on or before 30-8-1999, 27-8-1999, and 26-8-1999, respectively. The initial presentation of the complaints was admittedly well within those dates and the subsequent re-presentation was beyond those dates. The complaint was signed obviously by counsel for the complainant when it was presented initially."

24. Turning to the last contention on the side of the petitioners that the printed forms used in this case do not reflect the fact situation, I am afraid the same cannot be decided in these petitions and is got to be decided at the time of trial after giving an opportunity to the complainant. However, it may be an eye opener to the complainant-Bank."

9. The Judgment in **Appu Ramani** (supra) the case is under Forest Act. In **Pritama Reddy v. Charminar Co-operative**

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<sup>2</sup> 2001 (1) ALD (CrI.) 452 A.P

**Urban Bank Limited** (supra), the complaint was filed in the jurisdictional Court without signatures in the complaint and with certain objections, for which reason, the complaint was taken back and resubmitted. In the said circumstances, this Court held that resubmission beyond the date of limitation would not affect the complaint.

10. In both the cases, which are referred to supra, the complaint and charge sheet were filed in the jurisdictional court and thereafter returned with objections. Though resubmission was beyond the period of limitation, this Court found that there is no infirmity and the complaint can be taken cognizance of by the concerned courts. But in the present case, the complaint was not filed in the jurisdictional Court which is III Additional Chief Metropolitan Magistrate, but filed before IV Metropolitan Magistrate. In the said circumstances, it cannot be said that the complaint was filed in the Court having jurisdiction. For the said reason, the aforesaid two judgments are not applicable to the facts of the present case.

11. Section 142(1)(b) of the N.I.Act contemplates filing of the complaint within one month after the cause of action arises. Admittedly, complaint before the jurisdictional Court was filed after the period of limitation, which is one month. The provisions of Limitation Act are made inapplicable for the offence under Section 138 of the Negotiable Instruments Act. In 2003, an amendment was made to Section 142 (1) (b) of the Act, which reads as follows:

“(b) such complaint is made within one month of the date on which the cause of action arises under (c) of the proviso to Section 138:”

12. The said amendment was inserted by Act 55 of 2002 with effect from 06.02.2003. The said proviso which was added does not have retrospective affect. The Hon’ble Supreme Court in the case of **Subodh S.Salaskar v. Jayprakash M.Shah**<sup>3</sup>, held that Section 142(1)(b) proviso inserted is not retrospective.

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<sup>3</sup> (2008) 13 Supreme Court Cases 689

13. In the present case, admittedly, no application was made seeking condonation of delay in filing the complaint before the jurisdictional Court, which is III Additional Chief Metropolitan Magistrate, Hyderabad. In the absence of any application being made and reasons to be recorded, the III Additional Chief Metropolitan Magistrate, has taken cognizance. In the said circumstances, when the complaint was filed beyond the period of limitation, the complaint is liable to be dismissed.

14. In view of the findings recorded, the complaint being filed beyond the period of limitation, this Court is not inclined to go into the other grounds regarding enforceable debt raised by the appellant.

16. Accordingly, Criminal Appeal is dismissed.

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**K.SURENDER, J**

Date: 06.09.2022

Note: LR copy to be marked.

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**HON'BLE SRI JUSTICE K.SURENDER**

CRIMINAL APPEAL No.501 OF 2009

Date: 06.09.2022.

kvs

